

Public Chapter 531

HOUSE BILL NO. 1427

By Representatives Rhinehart, Kisber, Phelan, Lewis, Lois DeBerry, Bowers, Brenda Turner

Substituted for: Senate Bill No. 1064

By Senator Haynes

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 52, relative to the authority of municipal electric plants to acquire, improve, operate, lease and maintain telecommunications equipment and to provide telecommunications services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 52, is amended by adding the following as a new part:

SECTION 2. Every municipality operating an electric plant, whether pursuant to this chapter or any other public or private act or the provisions of the charter of the municipality, county or metropolitan government, has the power and is authorized, on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant or equipment for the provision of telephone, telegraph, telecommunications services, or any other like system, plant, or equipment within and/or without the corporate or county limits of such municipality, and, with the consent of such other municipality, within the corporate or county limits of any other municipality, in compliance with Tennessee Code Annotated, Title 65, Chapters 4 and 5, and all other applicable state and federal laws, rules and regulations. A municipality shall only be authorized to provide telephone, telegraph or telecommunications services through its board or supervisory body having responsibility for the municipality's electric plant. A municipality providing any of the services authorized by this section may not dispose of all or substantially all of the system, plant and equipment used to provide such services except upon compliance with the procedures set forth in Tennessee Code Annotated, Section 7-52-132. Notwithstanding Section 65-4-101(a)(2) or any other provision of this code or of any private act, to the extent that any municipality provides any of the services authorized by this section, such municipality shall be subject to regulation by the Tennessee Regulatory Authority in the same manner and to the same extent as other certificated providers of telecommunications services, including without limitation rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in Section 65-4-101, but only to the extent necessary to effect such regulation and only with respect to such municipality's provision of telephone, telegraph and communication services.

SECTION 3. A municipality providing any of the services authorized by Section 2 of this act shall not provide subsidies for such services. Notwithstanding the limitations set forth in the preceding sentence, a municipality providing such services shall be authorized to: (a) dedicate a reasonable portion of the electric plant to the provision of

such services the costs of which shall be allocated to such services for regulatory purposes; and (b) lend funds, at a rate of interest not less than the highest rate then earned by the municipality on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any of the services authorized under Section 2 of this act, provided, however, that such interest costs shall be allocated to the cost of such services for regulatory purposes. Any loan of funds made pursuant to this section shall be approved in advance by the State Director of Local Finance and shall contain such provisions as are required by the State Director of Local Finance.

SECTION 4. To the extent that it provides any of the services authorized by Section 2 of this act, a municipality shall have all the powers, obligations and authority granted entities providing telecommunications services under applicable laws of the United States or the State of Tennessee. To the extent that such authority and powers do not conflict with the provisions of Tennessee Code Annotated, Title 65, Chapters 4 or 5, and any rules, regulations, or orders issued thereunder, a municipality providing any of the services authorized by Section 2 of this act shall have all the authority and powers with respect to such services as are enumerated in Tennessee Code Annotated, Title 7, Chapter 52.

SECTION 5. A municipality providing any of the services authorized by Section 2 of this act shall make tax equivalent payments with respect to such services in the manner established for electric systems under Tennessee Code Annotated, Title 7, Chapter 52, Part 3. For purposes of the calculation of such tax equivalent payments only, the system, plant, and equipment used to provide such services shall be considered an electric plant, and the revenues received from such services shall be considered operating revenues. For regulatory purposes, a municipality shall allocate to the costs of any services authorized by Section 2 of this act an amount equal to a reasonable determination of the state, local, and federal taxes which would be required to be paid for each fiscal year by a non-governmental corporation that provides the identical services.

SECTION 6. For regulatory purposes, a municipality shall allocate to the costs of providing any of the services authorized by Section 2 of this act : (a) an amount for attachments to poles owned by the municipality equal to the highest rate charged by the municipality to any other person or entity for comparable pole attachments, and (b) any applicable rights-of-way fees, rentals, charges, or payments required by state or local law of a nongovernmental corporation that provides the identical services.

SECTION 7. Tennessee Code Annotated, Section 7-52-117(d), is amended by deleting the words and figures "or in counties that have adopted a metropolitan government, not to exceed two thousand dollars (\$2,000)".

SECTION 8. Tennessee Code Annotated, Section 7-52-102(10), is amended by inserting the language "metropolitan government," between the words "county," and "incorporated".

SECTION 9. Notwithstanding the authorization granted in Section 4 hereof, a municipal electric system shall not provide any of the services authorized by Section 2 of this act unrelated to its electric services within the service area of an existing telephone cooperative with fewer than one hundred thousand (100,000) total lines organized and operating under the provisions of Tennessee Code Annotated, Section 65-29-101, et seq., and therefore shall adhere to those regulations of the 1995 Tennessee Telecommunications Act and Rules of the Tennessee regulatory authority, which are applicable to the telephone cooperatives, and specifically Tennessee Code Annotated, Sections 65-4-101 and 65-29-130.

SECTION 10. Nothing in this act shall be construed to allow a municipality to provide any service for which a license, certification, or registration is required under Tennessee Code Annotated, Title 62, Chapter 32, Part 3.

SECTION 11. This act supersedes any conflicting provisions of general law, private act, charter or metropolitan charter provisions.

SECTION 12. Nothing in this act or any private act, charter, metropolitan charter, or amendments thereto, shall allow a municipality, county, metropolitan government, department, board, or other entity of local government to provide any service for which a license, certification, or registration is required under Tennessee Code Annotated, Title 62, Chapter 32, Part 3, to operate a cable system as defined by Tennessee Code Annotated, §7-59-201(2) for the provision of cable services, to provide pager service, or to operate as an internet service provider.

SECTION 13. (a) The General Assembly finds and declares:

(1) That electricity is a necessity for all individuals, industries, businesses, municipalities and counties in the State of Tennessee; and

(2) That the generation and transmission of electric power and the sale and distribution of electricity to consumers within the State are of vital importance to the citizens of this State; and

(3) That it is the policy of the General Assembly and this State to support a regulatory climate that ensures reliable electric services at reasonable prices for all consumers as a matter of public interest; and

(4) That markets for electricity are changing nationally and appear to be rapidly moving toward increased competition; and

(5) That the deregulation of Tennessee's electric utility industry could potentially have a profound impact on State resources by decreasing utility costs; and

(6) That such utility costs can further be lowered by allowing distributors of electricity in the State to engage in other type services, such as telephone and telecommunication services; and

(7) That electric utility deregulation in Tennessee could enhance the competitive position of Tennessee's businesses and industries, including Tennessee's ability to compete more effectively in business development; and

(8) That there exist significant opportunities to provide other innovative choices for electricity, and perhaps other utility services such as telephone and telecommunication services, to consumers with a deregulated electric utility industry; and

(9) That there is a need for careful consideration of all issues involving customer choice, the potential restructuring of, and competition in the electric utility industry and the present system of electric utility regulation; and

(10) That the Federal Energy Regulatory Commission and the legislatures and regulatory commissions of forty-nine states either have

implemented or are studying initiatives to restructure and to increase competition in the electric utility industry; and

(11) That the deregulation of the electric utility industry in Tennessee will be more complex than in most other states because Tennessee consumers are supplied power almost exclusively by the Tennessee Valley Authority, the Nation's largest public power supplier, which enjoys certain legal rights and protections that are not present in other markets; and

(12) That the interest of Tennessee's citizens in a competitive electric utility industry, as well as competitive telecommunication services, warrants the immediate attention of the General Assembly.

(b) There is hereby created a Special Joint Committee to study the issue of electric utility deregulation and its impact on Tennessee.

(c) The committee shall consist of four (4) members of the House of Representatives and four (4) members of the Senate to be appointed by the respective Speakers; provided, that no fewer than two (2) of the members of the joint committee shall be the current chairs, vice chairs or secretaries of the standing House and Senate committees that are responsible for energy matters affecting the State.

(d) In its deliberations, the Special Joint Committee shall study and examine the following issues, in addition to all other issues the committee deems pertinent related to the deregulation of the electric utility industry:

(1) What effect Tennessee's status as a state that is provided power almost exclusively from the Tennessee Valley Authority may have on the deregulation process;

(2) What services and other functions of the electric utility industry can best achieve their goals by being subject to competition, if any, taking into account factors such as reliability, price, profit, and rates;

(3) What services and other functions of the electric utility industry can best achieve their goals through regulation or a combination of regulation and competition, if any;

(4) Whether the electric utility industry's provision of telephone and telegraph services can enhance competition in those areas and aid the deregulation of the electric industry;

(5) With respect to those services and other functions that should be subjected to competition, the ways and means of monitoring such services and functions to ensure that there is, in fact, competition and that competition is achieving its goals; and

(6) With respect to those services and functions that should be regulated, what form such regulation should take and the ways and means of determining whether or not such regulation is achieving its goals.

(e) The study committee shall be charged with the duty and authority to interview witnesses who represent or advise suppliers, large and small industrial

consumers, individual consumers and other organizations which might have experience or pertinent information on this subject.

(f) All appropriate State agencies shall provide assistance to the Special Joint Committee upon request of the Chair.

(g) All legislative members of the Special Joint Committee who are duly elected members of the General Assembly shall remain members of such committee until the committee reports its findings and recommendations to the General Assembly.

(h) The Special Joint Committee shall be convened by the member with the most years of continuous service in the General Assembly; and at its first meeting shall elect a chair, vice-chair, and such other officers the committee deems necessary.

(i) The Special Joint Committee shall timely report its findings and recommendations, including any proposed legislation or interim reports, to the One-Hundredth General Assembly, no later than February 28, 1998, after which time the committee shall cease to exist unless additional time is requested by the chair of the committee and approved by the Speakers of the House and Senate, in which case the final report shall be submitted by February 28, 1999, after which time the committee shall cease to exist.

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. This act shall take effect upon becoming a law, the public welfare requiring it.